

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 13-3172

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JOSE CRISTOBAL CARDONA,

Appellant

v.

WARDEN LEWISBURG

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On Appeal from the United States District Court  
for the Middle District of Pennsylvania  
(D.C. Civil No. 4-10-cv-02269)  
District Judge: Honorable James M. Munley

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Submitted for Possible Summary Action Pursuant to  
Third Circuit LAR 27.4 and I.O.P. 10.6  
October 10, 2013

Before: RENDELL, FISHER and GREENAWAY, JR., Circuit Judges

(Opinion filed: October 25, 2013)

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OPINION

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PER CURIAM

Jose Cardona, a federal prisoner proceeding pro se, appeals from the District Court's denial of his motion for relief from judgment pursuant to Federal Rule of Civil Procedure Rule 60(b)(2). For the following reasons, we will summarily affirm.<sup>1</sup>

Cardona's habeas petition, pursuant to 28 U.S.C. § 2241, was denied on July 6, 2011. Since then, he has attempted to reopen the judgment at least five times. This appeal stems from his sixth unsuccessful attempt, filed on April 15, 2013. He relied on Rule 60(b)(2), claiming that he had newly discovered evidence that would warrant relief from the District Court's order denying his habeas petition.

Motions brought under Rule 60(b)(2) must be filed "no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c). Cardona's motion was filed nearly two years after the entry of judgment, and the District Court did not abuse its discretion in denying it as untimely.<sup>2</sup> See Brown v. Philadelphia

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<sup>1</sup> We have jurisdiction pursuant to 28 U.S.C. § 1291. We may summarily affirm the decision of the District Court if no substantial question is presented on appeal. 3d Cir. L.A.R. 27.4; I.O.P. 10.6.

<sup>2</sup> As he did in the District Court, Cardona argues that his previous appeal to us tolled the one-year deadline. As the District Court explained, (Dkt. No. 42, p. 4), it did not. See Hancock Indus. v. Schaeffer, 811 F.2d 225, 239 (3d Cir. 1987). The District Court also determined that Cardona's motion was meritless, an issue we need not discuss, given its untimeliness.

Hous. Auth., 350 F.3d 338, 342 (3d Cir. 2003). There being no substantial question presented on appeal, we will summarily affirm.